

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROMAN SELEZNEV,

Defendant.

No. CR11-70RAJ

**REDACTED ORDER ON
DEFENDANT'S MOTION TO
DISMISS FOR PROSECUTORIAL
MISCONDUCT**

Defendant Roman Seleznev has moved to dismiss claiming several grounds of prosecutorial misconduct (Dkt. #247). In ruling on this motion, the court references the following two fundamental precepts applicable to grand jury proceedings.

First, dismissal of the indictment is appropriate only if it is established that the violation substantially influenced the grand jury's decision to indict or if there is a grave doubt that the decision to indict was free from the substantial influence of such violations. *See generally, Nova Scotia v. United States*, 487 U.S. 250, 255, 263 (1988).

Second, if the court finds the prosecution materially interfered with the independence of the grand jury, an indictment can be dismissed under the court's inherent supervisory powers or to protect a defendant's due process rights. *See generally, United States v. De Rosa*, 783 F.2d 1401, 1404 (9th Cir. 1986) and *United States v. Samango*, 607 F.2d 877, 884 (9th Cir. 1979).

1 The court will separately analyze each of the defendant's claimed bases to
 2 dismiss the indictment, and then look at any cumulative effect that may have impacted
 3 the grand jury's autonomy and interfered with its exercise of unbiased judgment.

4 A. Threats to [REDACTED].

5 Defendant's briefing and argument reference the claimed area of prejudicial
 6 statements elicited before the grand jury about [REDACTED]
 7 [REDACTED] when [REDACTED] These threats
 8 included testimony of the [REDACTED] and
 9 suggestion that the [REDACTED]

10 [REDACTED]¹
 11 The court denies the claim that the elicitation of this testimony was misconduct
 12 for several reasons. First, while the government was clearly investigating the actions
 13 of the defendant, they were not precluded from examining conduct of other suspected
 14 co-conspirators involved in the overarching fraud investigation or eliciting statements
 15 they may have made that were pertinent to the grand jury investigation.

16 The statements by the [REDACTED] were directly related to the [REDACTED]
 17 [REDACTED]. The
 18 government alleges defendant's computer [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

21 In addition, the statements by [REDACTED] appear to be his effort to
 22 retrieve the computer and continue running the defendant's business. Specifically,
 23 [REDACTED]

24 ¹ The Government attached to its Response (Dkt. #267) the grand jury transcripts for several witnesses,
 including [REDACTED]. Reference to her grand jury testimony will hereafter be designated (GJ Tr. p. ____).

1 [REDACTED]
2 The [REDACTED] statements and [REDACTED] clearly demonstrated [REDACTED] to the
3 scheme allegedly orchestrated by the defendant which make them highly relevant.

4 The fact the grand jury did not return an indictment with a conspiracy charge
5 involving [REDACTED] or others is not controlling. The government was within proper
6 bounds to examine [REDACTED] about the scope of the [REDACTED]
7 [REDACTED] possible involvement in the crimes being investigated.

8 In the context of the statements and scope of the grand jury investigation, this
9 testimony does not rise anywhere close to a claim of prosecutorial misconduct.

10 B. Evidence of Abuse of [REDACTED].

11 [REDACTED] was asked a relatively benign question, [REDACTED]
12 [REDACTED]. [REDACTED] volunteered the statement about the [REDACTED]
13 [REDACTED] While it is noted that no follow-up questions were asked by the
14 prosecution, a brief admonishment to the jury to ignore the gratuitous comment may
15 have been in order. The failure to do so, however, does not constitute misconduct.

16 Likewise, the court finds no misconduct with the elicitation of testimony that
17 resulted in [REDACTED] stating the [REDACTED] in response to a
18 question about [REDACTED] While the testimony about the
19 [REDACTED] had marginal relevance, it [REDACTED]
20 [REDACTED]

21 The testimony about the [REDACTED] had
22 no relevance to the investigation. It was not solicited by or dwelled upon by the
23 government. In fact, the [REDACTED]
24 [REDACTED], not any government lawyers. [REDACTED] Under these

1 circumstances, the government's actions did not rise to the level of misconduct to
2 warrant dismissal of the indictment.

3 In considering the possible cumulative effect of [REDACTED] testimony on the
4 grand jury's decision-making, it must not be ignored that the grand jury previously
5 indicted the defendant without [REDACTED]

6 C. Impeachment Evidence.

7 The defendant contends the government withheld from the grand jury evidence
8 potentially affecting [REDACTED] credibility as a witness. The defense claims [REDACTED]
9 committed fraud related to [REDACTED] immigration status, submitted a fraudulent divorce
10 certificate to U.S. Citizenship and Immigration Services (CIS), [REDACTED]
11 [REDACTED]

12 The government does not dispute that [REDACTED] was the target of an
13 investigation by the Department of Homeland Security. Nor does it dispute that [REDACTED]
14 may have made false statements to the government in connection with [REDACTED] immigration
15 to the United States.

16 What is disputed is when the government learned about the investigation. The
17 government contends it was unaware of [REDACTED]
18 [REDACTED]

19 The record indicates [REDACTED]
20 [REDACTED] The grand jury returned the second superseding indictment on
21 October 8, 2014. (Dkt. #90.) Based upon the government's proffer, it was
22 December 5, 2014, or three months later, before the government lawyers learned [REDACTED]
23 was under investigation for fraud. Disclosure only becomes an issue if the government
24 had actual knowledge of [REDACTED] or engaged in some type of
deception to hide the investigation or deception from the grand jury. There is no

1 evidence before the court to suggest this occurred; consequently, there is no basis to
2 find these circumstances constitute prosecutorial misconduct.

3 D. [REDACTED].

4 The defendant claims misconduct with [REDACTED]
5 [REDACTED] The court concludes this argument is misplaced and
6 unwarranted. After reviewing [REDACTED], the court found no direct
7 references to the defendant as the [REDACTED] At best it was merely a
8 means of describing how the operation under investigation worked.

9 In assessing the impact of [REDACTED] characterizations, *United*
10 *States v. De Rosa*, 783 F.2d 1401, 1405 (9th Cir. 1986) advises that the question to
11 be asked is whether without this evidence was there more than sufficient evidence
12 to indict. That answer is supplied in the government's response memorandum
13 (Dkt. #267, p. 2) and calls for an overwhelming affirmative response.
14 Specifically, the government represented the following information supported the
15 grand jury's probable cause finding independent of the claimed prosecutorial
16 misconduct:

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

1 Moreover, the cases advanced by the defendant claiming prosecutorial
2 misconduct involved far more egregious circumstances than those before this
3 court.

4 In *United States v. Samango*, 607 F.2d 877 (9th Cir. 1979), the court found
5 prosecutorial misconduct because the prosecutor gave the grand jury lengthy
6 transcripts of testimony given before previous grand juries to read without
7 warning them of a key witness's doubtful credibility. The transcripts included a
8 barrage of insults and insinuations which the court found the prosecutor used
9 solely to engender prejudice. The prosecutor had also given the grand jury a nine-
10 day decision deadline that promoted a less than thorough and independent
11 evaluation of the evidence.

12 In *United States v. Roberts*, 481 F. Supp. 1385 (C.D. Cal. 1980), the court
13 found prosecutorial misconduct because the prosecutor (1) knowingly breached an
14 agreement with the court to present exculpatory evidence to the grand jury, and (2)
15 the prosecutor impermissibly manipulated and misled the grand jury, depriving it
16 of its opportunity to evaluate the credibility of witnesses and by making
17 prejudicial remarks to influence it.

18 As the government has acknowledged, [REDACTED] could have exercised
19 greater discretion in the characterizations utilized to explain the process and
20 investigation, however, nothing [REDACTED] said is tantamount to misconduct to warrant
21 dismissal or anywhere close to the circumstances of *Samango* or *Roberts* to warrant
22 dismissal.

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1 E. Reference to Roman Seleznev.

2 The defendant also claims misconduct via [REDACTED]'s reference to
3 Roman Seleznev by name when describing criminal conduct reflected in the
4 documents.

5 As noted above, [REDACTED] could have exercised better discretion in the
6 selection of references to Mr. Seleznev and avoided using the defendant's name [REDACTED]
7 [REDACTED]. Other than poor judgment, his testimony does not meet the
8 standards to constitute prosecutorial misconduct.

9 F. Cumulative Impact of Alleged Misconduct.

10 When considering all of the alleged acts of prosecutorial misconduct, the court
11 finds the acts may have resulted in some slight prejudice to the defendant. But even
12 without these references, it is clear to the court there was more than sufficient evidence
13 to indict when considering the record as a whole. There is no clear evidence to suggest
14 the claims demonstrated that this slight degree of prejudice substantially influenced the
15 grand jury's decision to indict or interfered with their exercise of unbiased judgment.

16 For all the foregoing reasons, the defendant's motion to dismiss for
17 prosecutorial misconduct (Dkt. #247) is denied.

18 DATED this 7th day of April, 2016.

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20 The Honorable Richard A. Jones
21 United States District Judge
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